

**IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

ANTHONY HENDON (159738),

Plaintiff,

BOB RILEY, et al

Defendants.

**Civil Action No.:
2:06-CV-1079-WKW**

ANSWER and SPECIAL REPORT

COMES NOW, the Defendants **Bob Riley, Richard Allen, Gwendolyn Mosley, Brian Mitchell, Latrice Green, Paul Whaley, Tracey Brown, and Charlotte Wilson**, by and through *Bettie J. Carmack* of the State of Alabama Attorney General's Office, and, in response to this Honorable Court's Order dated December 6, 2006, state as follows:

PARTIES

1. **Anthony Hendon** (Plaintiff) – an Alabama Department of Corrections inmate currently housed at Easterling Correctional Facility, located at 200 Wallace Drive Clio, Alabama 36017-2615.
2. **Richard Allen** (Defendant) – The Alabama Department of Corrections (ADOC) prison commissioner.
3. **Bob Riley** (Defendant) – Governor of the State of Alabama.

4. **Sidney Williams** (Defendant) – Chairman of the Alabama Board of Pardons and Parole.
5. **William Segrest** (Defendant) – Parole Board Director
6. **Gwendolyn Mosley** (Defendant) – an Alabama Department of Corrections employee, currently employed by Easterling Correctional Facility as a Warden.
7. **Brian Mitchell** – an Alabama Department of Corrections employee, currently employed by Easterling Correctional Facility as a Psychological Associate II.
8. **Latrice Green** – an Alabama Department of Corrections employee, currently employed by Easterling Correctional Facility as a Classification Supervisor.
9. **Paul Whaley** – an Alabama Department of Corrections employee, currently employed by Easterling Correctional Facility as a Classification Director.
10. **Tracey Brown** – an Alabama Department of Corrections employee, currently employed by Easterling Correctional Facility as a Classification Supervisor
11. **Charlotte Wilson** - an Alabama Department of Corrections employee, currently employed by Easterling Correctional Facility as a Classification Specialist.

ANSWER

In response to the Plaintiff's allegations, Defendants state as follows:

1. Defendants deny Plaintiff's allegations and demand strict proof thereof.
2. Defendants deny that any of the Plaintiff's constitutional rights have been violated.
3. Defendants assert the affirmative defenses of sovereign, qualified immunity, and absolute immunity.
4. Defendants deny each and every material allegation not expressly admitted herein and demand strict proof thereof.

I. PLAINTIFF'S CLAIMS

The plaintiff asserts that Easterling Correctional Facility is overcrowded and that prison overcrowding has caused a health hazard. According to the plaintiff, the prison is rat infested, has "foul tasting greasy film drinking water," and that sanitation and security are impossible to maintain. The plaintiff also contends that defendants have forced him to take "counterproductive" programs like the Pre-SAP, Crime Bill SAP, and Aftercare programs.

II. IMMUNITY

HENDON'S COMPLAINT IS DUE TO BE DISMISSED BECAUSE THE DEFENDANTS ARE IMMUNE FROM LIABILITY.

Hendon's claims are due to be dismissed because Mosley, Mitchell, Green, Whaley, Brown, and Wilson are immune from liability. The United States Supreme Court has stated:

There can be no doubt ... that suit against the State and its Board of Corrections is barred by the Eleventh Amendment, unless Alabama has consented to the filing of such a suit. Edelman v. Jordan, 415 U.S. 651 (1974); Ford Motor Co. v. Department of Treasury, 323 U.S. 459 (1945); Worcester County Trust Co. v. Riley, 302 U.S. 292 (1937). Respondents do not contend that Alabama has consented to this suit, and it appears that no consent could be given under Art. I, § 14, of the Alabama Constitution, which provides that no consent could be given under Art. I, § 14, of the Alabama Constitution, which provides that 'the State of Alabama shall never be made a defendant in any court of law or equity.'

Alabama v. Pugh, 438 U.S. 781, 782 (1978).

Mosley, Mitchell, Green, Whaley, Brown, and Wilson are state employees and a suit against them is a suit against the State. The State has not consented or waived immunity in this case. Thus, Mosley, Mitchell, Green, Whaley, Brown, and Wilson are absolutely immune from liability. In addition, Mosley, Mitchell, Green, Whaley, Brown, and Wilson are protected by qualified immunity.

The Eleventh Circuit has stated that: "[q]ualified immunity protects government officials from civil trials and liability when their conduct in performing discretionary functions 'violates no clearly established statutory or constitutional

rights of which a reasonable person would have known.”” Wilson v. Blankenship, 163 F.3d 1284, 1288 (11th Cir. 1998) *quoting* Lassiter v. Ala. A & M Univ. Bd. of Trustees, 28 F.3d 1146, 1149 (11th Cir. 1994) (en banc).

Because the alleged acts of Mosley, Mitchell, Green, Whaley, Brown, and Wilson consist of discretionary functions, and because their actions do not violate any clearly established constitutional or statutory rights of Hendon’s, Mosley, Mitchell, Green, Whaley, Brown, and Wilson are protected by qualified immunity. Wilson v. Blankenship, 163 F. 3d at 1284 (holding that the marshal, wardens, and corrections officer were protected by qualified immunity); *see also* Pinkney v. Davis, 952 F. Supp. 1561 (M.D. Ala. 1997) (holding that wardens, deputy warden, and other prison officials were entitled to qualified immunity).

The plaintiff has named Bob Riley and Richard Allen as defendants, but “[i]t is clear that [these] defendants are designated defendants solely on account of their ultimate supervisory roles as head of state government and head of the government which oversees state prisons. The law is well[-]settled that supervisory officials cannot be held liable in an action brought pursuant to 42 U.S.C. § 1983 under the theory of respondeat superior or vicarious liability.” Ford v. Deloach, No. Civ. A. 03-B-0110-N, 2005 WL 1243346, at *3 (M.D. Ala. May 25, 2005).

To recover from Bob Riley and Richard Allen, Hendon would have to show that they are “liable either through their personal participation in the acts comprising the alleged constitutional violation or the existence of a causal

connection linking their actions to the violation.” *See id.* Although Hendon has listed a number of alleged constitutional violations at Easterling Correctional Facility related to prison overcrowding and the SAP program, Hendon has failed to show how the actions of Commissioner Allen or Governor Riley contributed to these alleged violations. As a result, Hendon’s complaint is due to be dismissed. *See Ford v. Deloach*, 2005 WL 1243346, at *4 (“[E]ven if [the plaintiff] could cure his deficient showing to maintain his action against the Governor and Corrections Commissioner, the claims against them would warrant dismissal since they are grounded solely on vicarious liability.”)

ARGUMENT ON THE MERITS

“The Eighth Amendment . . . prohibits conditions of confinement that involve the wanton and unnecessary infliction of pain . . . The Amendment[, however,] only prohibits those conditions that deny the ‘minimal civilized measure of life’s necessities.’” *Patterson v. Campbell*, No. 305CV443-S, 2006 WL 517607, at *3 (W.D. Ky. Feb. 28, 2006) *quoting Rhodes v. Chapman*, 452 U.S. 337, 347-348 (1981). Conditions that may evidence the denial of minimal life’s necessities due to prison overcrowding, include: deprivations of essential food, medical care, or sanitation and an increase in violence. *See Rhodes v. Chapman*, 452 U.S. at 347-348. Conditions, however, that are just “restrictive and even harsh, . . . are part of the penalty that criminal offenders pay for their offenses to society.” *See id.*, at 347.

A. Prison overcrowding

The plaintiff makes a vague allegation that the prison is overcrowded. Hendon's claims are vague and conclusory. Various Alabama courts have held that "[v]ague and conclusory allegations of civil rights violations . . . are not sufficient and must, for that reason, be dismissed." Forehand v. Roberts, et al, 1992 WL 554241, at *1 (M.D. Ala. 1992) *citing* Fullman v. Graddick, 739 F. 2d 553, 557 (11th Cir. 1984); Sanders v. Miller, 837 F. Supp 1106, 1109 (N.D. Ala. 1992).

B. The prison is allegedly infested with rats.

The plaintiff contends that the prison is infested with rats. The plaintiff's contention is without merit. The prison receives pest control services on a monthly basis. (Exhibit A)

C. The prison drinking water is allegedly filmy and greasy.

The plaintiff contends that the prison drinking water has a "foul tasting greasy film." The plaintiff's contention is without merit. According to Warden Mosley, she and the staff drink the water and have no complaints about the drinking water. (Exhibit A) In addition, Easterling had a water quality test and the test showed no evidence of contaminants. (Exhibit A- attachment).

D. The plaintiff has allegedly been forced to take “counterproductive programs.”

The plaintiff has alleged that he and other prisoners are forced to take “counterproductive programs” like the SAP Crime Bill program in order to receive government funding. The plaintiff’s contention is without merit. The Department of Corrections did not order the plaintiff to take Crime Bill SAP; Judge Eric M. Fancher ordered the plaintiff to participate in a drug treatment program, i.e. SAP. (Exhibits B and D) Furthermore, Hendon informed the State Probation/Parole Officer that he wanted to participate in a substance abuse program. (Exhibit C – attachment)

CONCLUSION

Hendon has made numerous allegations regarding the conditions at Easterling Correctional Facility. Hendon, however, has failed to show that the conditions at Easterling have resulted in his being denied minimal life necessities and, as a result, Hendon’s complaint is due to be dismissed. *See Patterson v. Campbell*, No. Civ. A. 305CV443-S, 2006 WL 517607, at *3 (W. D. Ky. Feb. 28, 2006)(“Although Plaintiff describes uncomfortable, arguably harsh conditions . . . none of the allegations fall within the ambit of conduct or conditions that run afoul of the Eighth Amendment. The complaint contains no allegations that Plaintiff was deprived of the minimal measure of life’s necessities. The complaint thus

fails to assert . . . conditions . . . of [a] constitutional magnitude.”) Furthermore, Hendon’s claims about the SAP program are without merit. Because Hendon’s claims are without merit, his complaint is due to be dismissed.

Respectfully submitted,

TROY KING (KIN-047)
ATTORNEY GENERAL
By:

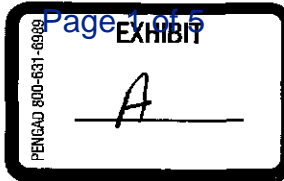
/s/Bettie J. Carmack
Bettie J. Carmack (CAR-132)
Assistant Attorney General
Civil Litigation Division
11 South Union Street
Montgomery, AL 36130
Telephone: (334) 353-5305
Facsimile: (334) 242-2433

CERTIFICATE OF SERVICE

This is to certify that I have on this **12th** day of **January, 2007**, served copies of the foregoing *Answer and Special Report* upon the plaintiff by depositing same in the United States Mail, addressed as follows:

Anthony Hendon
159738
Easterling Correctional Facility
200 Wallace Drive
Clio, AL 36017

/s/ Bettie J. Carmack
Bettie J. Carmack (CAR -132)
Assistant Attorney General
Civil Litigation Division



IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ANTHONY HENDON, #159738

Plaintiff,

VS.

BOB RILEY, GOVERNOR, et.al.

Defendant (s)

CASE NO. 2:06-CV-1079-WKW

AFFIDAVIT

Before me, the undersigned authority, a Notary Public in and for said County and State of Alabama at Large, personally appeared Gwendolyn Mosley, who being known to me and being by me duly sworn, deposes and says under oath as follows:

My name is Gwendolyn Mosley, and I am presently employed as Warden III, employed by the Department of Corrections, Easterling Correctional Facility, 200 Wallace Dr., Clio, Alabama, 36017. I am over twenty-one (21) years of age.

Inmate Anthony Hendon, #159738 was assigned to Easterling Correctional Facility on September 23, 2003.

At the present time Easterling Correctional Facility has approximately 1263 inmates assigned. All ADOC Facilities are over the required limit of inmates. ADOC is understaffed with Correctional Officers, and Easterling is not fully staffed at the present time, but we have officers to work overtime to fill in the areas that are needed.

I have not forced Inmate Anthony Hendon to take a Counter Productive Program (Crime Bill SAP).

Our Facility is contracted with Hurst Pest Control, with monthly service. This service includes the control of roaches, fleas, spiders, ants, rats, mice and silverfish (Exhibit #1).

Inmate Hendon's allegation that the water has a foul tasting, greasy film is untrue. The staff and myself drink the same water and found no complaints with the drinking water. Our Facility received an Annual Drinking Water Quality Report from the City of Clio, Alabama (Exhibit #2).

Affidavit – Gwendolyn Mosley
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I have not violated Inmate Hendon's Constitutional Rights.

Gwendolyn C. Mosley
GWENDOLYN MOSLEY

SWORN TO AND SUBSCRIBED TO before me this the 2nd day of
January, 2007.

Linda E. Seal
NOTARY PUBLIC

My Commission Expires: 7-15-07

HURST PEST CONTROL
P O BOX 673
EUFAULA, AL 36072-0673

BID

DATE	
7/20/2006	102

BILL TO
EASTERLING CORRECTIONAL FACILITY P O BOX 10 CLIO, AL

ITEM	DESCRIPTION	QTY	RATE	AMOUNT
PEST CONTROL	MONTHLY SERVICE: PEST CONTROL BEGINNING OCTOBER 1, 2006 THRU SEPTEMBER 30, 2007. SERVICE INCLUDES CONTROL OF ROACHES, FLEAS, SPIDERS, ANTS, RATS, MICE AND SILVERFISH. <i>R. Hurst</i>	12	135.00	1,620.00
SS#252-96-4427 TELEPHONE # 687-6746 PERMIT # 54662		Total		1,620.00

Table of Primary Contaminants

At high levels some primary contaminants are known to pose a health risks to humans. This table provides a quick glance of any primary contaminant detections.

CONTAMINANT	MCL	RANGE DETECTED	CONTAMINANT	MCL	RANGE DETECTED
Bacteriological			Endothall	100	ND
Total Coliform Bacteria	< 5%	0	Endrin	2	ND
Turbidity	TT	0.31 1.05	Epichlorohydrin	TT	ND
Radiochemical			Glyphosate	700	ND
Beta/photon emitters (mrem/yr)	4	ND	Heptachlor	400	ND
Alpha emitters (pci/l)	15	4.12+ .57 42+/-2	Heptachlor epoxide	200	ND
Radium 228	5	0.0/-0.4 1.5+/-0.6	Hexachlorobenzene	1	ND
Uranium	30	ND	Lindane	200	ND
Inorganic			Methoxychlor	40	ND
Antimony (ppb)	6	ND	Oxamyl [Vydate]	200	ND
Arsenic (ppb)	10	ND	PCBs	500	ND
Asbestos (MFL)	7	ND	Pentachlorophenol	1	ND
Barium (ppm)	2	ND	Picloram	500	ND
Beryllium (ppb)	4	ND	Simazine	4	ND
Cadmium (ppb)	5	ND	Toxaphene	3	ND
Chromium (ppb)	100	ND	Benzene	5	ND
Copper (ppm)	AL=1.3	ND	Carbon Tetrachloride	5	ND
Cyanide (ppb)	200	ND	Chlorobenzene	100	ND
Fluoride (ppm)	4	0.71 1.07	Dibromochloropropane	200	ND
Lead (ppb)	AL=15	ND	O-Dichlorobenzene	600	ND
Mercury (ppb)	2	ND	p-Dichlorobenzene	75	ND
Nitrate (ppm)	10	0.19 0.0.20	1,2-Dichloroethane	5	ND
Nitrite (ppm)	1	ND	1,1-Dichloroethylene	7	ND
Selenium	50	ND	Cis-1,2-Dichloroethylene	70	ND
Thallium	2	ND	trans-1,2-Dichloroethylene	100	ND
Organic Chemicals			Dichloromethane	5	ND
2,4-D	70	ND	1,2-Dichloropropane	5	ND
2,4,5-TP (Silvex)	50	ND	Ethylbenzene	700	ND
Acrylamide	TT	ND	Ethylene dibromide	50	ND
Alachlor	2	ND	Styrene	100	ND
Atrazine	3	ND	Tetrachloroethylene	5	ND
Benzo(a)pyrene[PHAs]	200	ND	1,2,4-Trichlorobenzene	70	ND
Carbofuran	40	ND	1,1,1-Trichloroethane	200	ND
Chlordane	2	ND	1,1,2-Trichloroethane	5	ND
Dalapon	200	ND	Trichloroethylene	5	ND
Di-(2-ethylhexyl)adipate	400	ND	TTHM	80	ND
Di(2-ethylhexyl)phthlates	6	ND	Toluene	1	ND
Dinoseb	7	ND	Vinyl Chloride	2	ND
Diquat	20	ND	Xylenes	10	ND
Dioxin[2,3,7,8-TCDD]	30	ND	TOC	TT	ND
Chlorimines (MRDLG)	4	ND	Chlorine (MRDLG)	4	ND
Chlorite	1	ND	Bromate	10	ND
Chlorine Dioxide (MRDLG)	800	ND	HAA5's	60	ND

TABLE OF DETECTED CONTAMINANTS

Contaminant	Violation Y/N	Range Detected	Unit Measurement	MCLG	MCL	Likely Source of Contamination
Turbidity 04 Test Results	NO	0.31 -1.05		n/a	TT	Soil runoff
Alpha emitters Results 05	NO	4.12+ .57 42+/-2	pCi/l	0	15	Erosion of natural deposits
Combined radium (2005)	NO	0.0/-0.4 1.5+/-0.6	pCi/l	0	5	Erosion of natural deposits
Fluoride 2004 Test Results	NO	0.71 1.07	ppm	4	4	Erosion of natural deposits; water additive which promotes strong teeth; discharge from fertilizer and aluminum factories
Nitrate (as Nitrogen) (Test results 2005)	NO	0.19 0.0.20	ppm	10	10	Runoff from fertilizer use; leaching from septic tanks, sewage; erosion of natural deposits

TABLE OF DETECTED SECONDARY CONTAMINANTS (TEST RESULTS 2004)

Contaminant	MCL	Range of Detects	Contaminant	MCL	Range of Detects
Aluminum	0.2	0.067-0.204	Manganese	0.05	ND-0.012
Chloride	250	13.0-16.4	Zinc	5	ND-0.061
Color	15	5-10	Lead	0.015	ND-0.044
Copper	1	ND-0.054	Sulfate	250	97.5-129
Iron	0.3	ND-0.359	Total Dissolved Solids	500	168-248

TABLE OF SPECIAL CONTAMINANTS (TEST RESULTS 2004)

Contaminant	Range of Detects	Contaminant	Range of Detects	Contaminant	Range of Detects	Contaminant	Range of Detects
Calcium	1.6-2.84	Hardness CaCo3	3.01-7.80	Alkalinity	163-236	Specific Conductance	436-501
Sodium	97.5-129	Langelier Index	-0.38 +0.95	PH	8.75-9.769.0		

In addition to the primary drinking water contaminants, the utility monitors regularly for the following unregulated and secondary contaminants as regulated by the Alabama Department of Environmental Management. Unregulated contaminants are those for which EPA has not established drinking water standards. The purpose of unregulated contaminant monitoring is to assist EPA in determining the occurrence of unregulated contaminants in drinking water and whether future regulation is warranted.

TABLE OF UNREGULATED DETECTED CONTAMINANTS

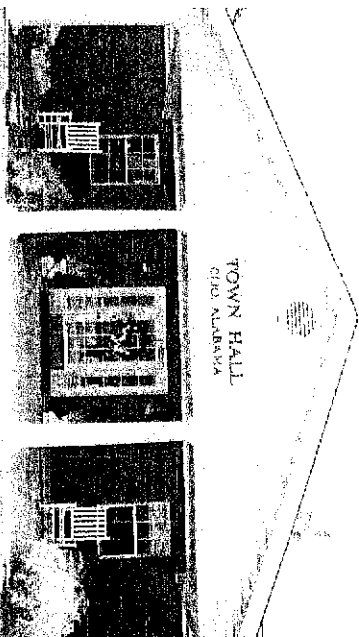
CONTAMINANT	RANGE OF DETECTS	CONTAMINANT	RANGE OF DETECTS
Bromodichloromethane	1.60	Dibromochloromethane	2.45
Chloroform	1.26	Bromoform	1.35

CITY OF CLIO
P.O. Box 219
CLIO, AL 36017

EASTERLING CORRECTIONAL CENTER
200 WALLACE DRIVE
CLIO, AL 36017

PERMIT # 2

CITY OF CLIO



Annual Drinking Water Quality Report

January—December 2005

We're pleased to present to you this year's Annual Quality Water Report. This report is designed to inform you about the quality water and services we deliver to you every day. Our constant goal is to provide you with a safe and dependable supply of drinking water. We want you to understand the efforts we make to continually improve the water treatment process and protect our water resources. We are committed to ensuring the quality of your water. We utilize two wells and our water resource is groundwater. Well #3 is located on County Road 15 and draws from the Clayton Aquifer. Well #4 is located on Blue Springs Street with pumping capacity of 850 GPM and draws water from the Tuscaloosa Aquifer. The water we provide to our customers requires no specialized treatment. However, chlorine is added for disinfection purposes.

The Source Water Protection Plan was completed in 1994. It is available at our office providing more information such as potential sources of contamination. I'm pleased to report that our drinking water is safe and meets federal and state requirements. If you have any questions about this report or concerning your water utility, please contact Jeremy Hagler at 334-397-2723. We want our valued customers to be informed about their water utility. If you want to learn more, please attend any of our regularly scheduled meetings held on the first & third Monday of each month, 6 PM, at the Clio City Hall on 3311 Eamville Street.

COUSIN

♦Jack Pelfrey, Mayor ♦Stephanie Sapp ♦Matthew White
♦Judy Riley, Pro-Tem ♦Beverly Clark ♦Kenneth Johnson

Tel: 334-397-2723

PLAIN LANGUAGE DEFINITIONS

Non-Detects (ND) - Laboratory analysis indicates that the contaminant is not present.

Not Required (NR) - Laboratory analysis not required due to waiver granted by the Environmental Protection Agency for the State of Alabama.

Parts per million (ppm) or Milligrams per liter (mg/l) - one part per million corresponds to one minute in two years or a single penny in \$10,000.

Parts per billion (ppb) or Micrograms per liter (µg/l) - one part per billion corresponds to one minute in 2,000 years, or a single penny in \$10,000,000.

Parts per trillion (ppt) or Nanograms per liter (ng/l) - one part per trillion corresponds to one minute in 2,000,000 years, or a single penny in \$10,000,000,000.

Parts per quadrillion (ppq) or Picograms per liter (pg/l) - one part per quadrillion corresponds to one minute in 2,000,000,000 years or one penny in \$10,000,000,000,000.

Picocuries per liter (pCi/L) - picocuries per liter is a measure of the radioactivity in water.

Millirems per year (mrem/yr) - measure of radiation absorbed by the body.

Nephelometric Turbidity Unit (NTU) - nephelometric turbidity unit is a measure of the clarity of water. Turbidity in excess of 5 NTU is just noticeable to the average person.

Tolerances & Exemptions (T&E) - State or EPA permission not to meet an MCL or a treatment technique under certain conditions.

Action Level (AL) - the concentration of a contaminant which, if exceeded, triggers treatment or other requirements which a water system must follow.

Treatment Technique (TT) - (mandatory language) A treatment technique is a required process intended to reduce the level of a contaminant in drinking water.

Maximum Contaminant Level (MCL) - (mandatory language) The "Maximum Allowed" (MCL) is the highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.

Maximum Contaminant Level Goal (MCLG) - The "Goal" (MCLG) is the level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

GENERAL INFORMATION

Health effects:

Alpha emitters. Certain minerals are radioactive and may emit a form of radiation known as Alpha radiation. Some people who drink water containing Alpha emitters in excess of the MCL over many years may have an increased risk of cancer.

The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity.

Some people may be more vulnerable to contaminants in drinking water than the general population. People who are immunocompromised, such as cancer patients undergoing chemotherapy, organ transplant recipients, HIV/AIDS positive or individuals with other immune system disorders, some elderly, and infants, can be particularly at risk from infections. Those at risk should seek advice about drinking water from the health care providers. EPA/CDC guidelines on appropriate means to lessen the risk of infection by Cryptosporidium and other microbial contaminants are available from the Safe Drinking Water Hotline (1-800-426-4791).

All drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by call the Environmental Protection Agency's Safe Drinking Water Hotline (1-800-426-4791).

Based on a study conducted by ADEM with the approval of the EPA, a statewide waiver for the monitoring of Asbestos and Dioxin was issued. Thus, monitoring for these contaminants was not required.

MCL's are set at very stringent levels. To understand the possible health effects described for many regulated contaminants, a person would have to drink two liters of water every day at the MCL level for a lifetime to have a one-in-a-million chance of having the described health effect.

We at the City of Clio work around the clock to provide top quality water to every tap. We ask that all our customers help us protect our water sources, which are the heart of our community, our way of life and our children's future.



VIVIAN
City
Clerk



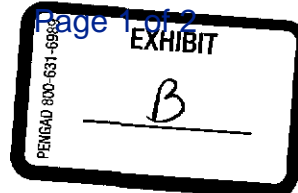
CHRISTI
Clerk



JOHN
Maintenance
Operator



JEREMY
Certified
Operator



IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ANTHONY HENDON, #159738

Plaintiff,

VS.

BOB RILEY, GOVERNOR, et.al.

Defendant (s)

CASE NO. 2:06-CV-1079-WKW

AFFIDAVIT

Before me, the undersigned authority, a Notary Public in and for said County and State of Alabama at Large, personally appeared Charlotte Wilson, who being known to me and being by me duly sworn, deposes and says under oath as follows:

My name is Charlotte Wilson, and I am presently employed as Classification Specialist, employed by the Department of Corrections, Easterling Correctional Facility, 200 Wallace Dr., Clio, Alabama, 36017. I am over twenty-one (21) years of age.

I, Charlotte Wilson, Classification Specialist have not violated any constitutional rights of Inmate Anthony Dell Hendon B/159738 or any other inmate assigned to Alabama Department of Corrections. I did not force Inmate Hendon to participate in Pre-SAP, Crime Bill SAP, Aftercare, or any other program offered at Easterling Correctional Facility. Inmate Hendon was court ordered for a Drug Treatment Program by Judge Eric M. Fancher from Jefferson/Bessemer County District Court on May 20, 2003 (Exhibit #1). Again, I have not violated Inmate Hendon's Eighth and Fourteenth Amendments. I have no control over inmates population for overcrowding. Inmate Hendon allegation that the drinking water has a foul taste and greasy film is false. I have seen no evidence.

I have not violated Inmate Hendon's Constitutional Rights.

Charlotte Wilson
CHARLOTTE WILSON

SWORN TO AND SUBSCRIBED TO before me this the 2nd day of January, 2007.

Shore M. Mabry
NOTARY PUBLIC

My Commission Expires: 03/31/07

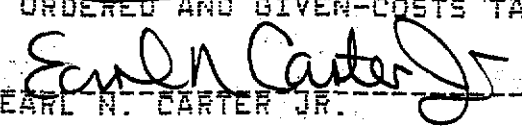
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ALABAMA JUDICIAL DATA CENTER
JEFF-BESMR COUNTY
TRANSCRIPT OF RECORD
CONVICTION REPORT

09-99

37-10

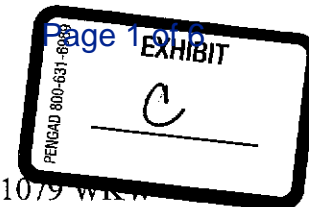
DC 2003 001094.00 01
ERIC M. FANCHER

DISTRICT COURT OF JEFF-BESMR COUNTY				COURT ORI: 001033 J			
STATE OF ALABAMA VS.		DC NO: 0000 114866.00		DC NO: 0000 114866.00			
HENDON ANTHONY DELL		ALIAS: HENDON ANTHONY J		SSN: 419766149			
700 2ND AVENUE		ALIAS:		SID: 000011007			
BESSEMER AL 35020				AIS:			
DOB: 04/18/1955		SEX: M		HT: 6 00		WT: 160	
RACE: () W (X) B () O		COMPLEXION:		AGE:		HAIR: BLK EYE: BRO	
DATE OFFENSE: 11/29/2002		ARREST DATE: 03/27/2003		ARREST ORI: 0010000			
CHARGES & CONV		CITES		CT CL COURT ACTION		CA DATE	
REC STOLEN PROP 2N		13A-008-018		01 C GUILTY PLEA		05/20/2003	
212C				0		00/00/0000	
				0		00/00/0000	
JUDGE: ERIC M. FANCHER 4101				PROSECUTOR: GREEN ARTHUR			
PROBATION APPLIED		GRANTED		DATE		REARRESTED DATE	
() Y () N		() Y () N		() Y () N		() Y () N	
15-18-8, CODE OF ALA 1975		IMPOSED		SUSPENDED		TOTAL	
() Y (X) N CONFINEMENT:		15 00 000		00 00 000		15 00 000	
PROBATION :		00 00 000		00 00 000		00 00 134	
DATE SENTENCED: 05/20/2003		SENTENCE BEGINS: 08/07/2003					
PROVISIONS		COSTS/RESTITUTION		DUE		ORDERED	
PENITENTIARY		RESTITUTION		\$0.00		\$0.00	
CONCURR SENT		ATTORNEY FEE		\$250.00		\$250.00	
HABITUAL OFDR		CRIME VICTIMS		\$250.00		\$250.00	
		COST		\$264.00		\$264.00	
		FINE		\$500.00		\$500.00	
		MUNICIPAL FEES		\$0.00		\$0.00	
		DRUG FEES		\$0.00		\$0.00	
		ADDTL DEFENDANT		\$0.00		\$0.00	
		DA FEES		\$0.00		\$0.00	
		COLLECTION ACCT		\$0.00		\$0.00	
		JAIL FEES		\$0.00		\$0.00	
		TOTAL		\$1264.00		\$1264.00	
APPEAL DATE		SUSPENDED		AFFIRMED		REARREST	
() Y () N		() Y () N		() Y () N		() Y () N	
REMARKS:							
THIS IS TO CERTIFY THAT THE ABOVE INFORMATION WAS EXTRACTED FROM OFFICIAL COURT RECORDS AND IS TRUE AND CORRECT.							
8/7/03-PROBATION DENIED-15 YEAR SENT PLACED INTO EFFECT-IT'S RECOMMENDED THAT DEPT BE PLACED IN DRUG TREATMENT BEFORE BEING PLACED IN GENERAL PRISON POPULATION-JAIL CREDIT ORDERED AND GIVEN-COSTS TAXED TO RUN CC/W ALL OTHER CASES							
 EARL N. CARTER JR.							
159738A(30) 08/12/2003							

OPERATOR: GLA
PREPARED: 08/12/2003

ENTERED TERMINALS
DATE 8/14/03 BY CL

AUG 14 2003



STATE OF ALABAMA:
MONTGOMERY COUNTY:

CIVIL ACTION NO. 2:06 CV 1079 WKW
HENDON, ANTHONY DELL #159738B

A F F I D A V I T

My name is Paul Whaley II and I am presently employed as the Director of Classification, Alabama Dept. of Corrections, P O Box 301501, Montgomery, Alabama 36130. I am over the age of twenty-one years. I have 28 years' experience with the Alabama Dept. of Corrections, all in the area of inmate classification. I worked at Kilby as the institutional classification specialist for five years managing a caseload as well as performing intake and reclassification duties. Following that, I served 9 ½ years as a member of the Central Review Board where the vast majority of classification determinations statewide relative to placements, programs, custodies, institutional assignments and security levels were made. I have served as the Director of Classification for 13 ½ years. I have attended specialized training with the National Institute of Corrections. I hold Masters' degrees in both Criminal Justice and Counseling. I hold a specialized instructor's certificate (#647) issued by the Peace Officers' Standards and Training Commission. I have given presentations around this state to Circuit Judges, District Attorneys, and attorneys for CLE credit. I am qualified to testify to the following with respect to the issues raised in this pleading.

Inmate Anthony Dell Hendon #159738 B is a dedicated recidivist currently serving 15 years for RSP.

In his complaint, inmate Hendon alleges I have forced him to participate in certain drug treatment program which he alleges with conviction are counterproductive. No inmate is required to take any drug treatment program. It is a matter of choice. How someone such as Hendon could determine that such programs are "counterproductive" is unclear unless they inhibit his own personal agenda. Hendon has amassed an enviable criminal record and upon his most recent return to prison indicated a desire for treatment (exhibit A).

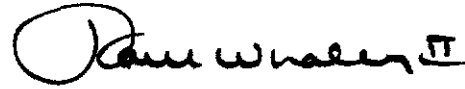
I have no personal knowledge of Hendon's living conditions. Crime and prison has been Hendon's choice alone to make. If he does not care for the accommodations,

Page 2, Hendon, Anthony Dell #159738

why does he choose to return time and time again? I have no personal knowledge of any allegations about parole practices. I have never "mismanaged" treatment monies. I do not have anything to do with the funding process. I have never "split" funding with anyone. I have no personal knowledge of the drinking water at Easterling.

Inmate Hendon has received no less than 14 rule violations since early 2005. His contempt for institutional rules and the law remains profound. Hendon will complete his current sentence 12/7/07. At that point he will be free to exercise his judgment about his activities and abuse. Hopefully he will make the effort for once to return to society as a safe and productive citizen. Should Hendon choose otherwise, the hospitality of the Alabama Department of Corrections will be at his disposal once again?

I have violated no right of this criminal.



Paul Whaley II

STATE OF ALABAMA:

COUNTY OF MONTGOMERY:

SWORN TO AND SUBSCRIBED before me this the 14th day of December, 2006.


Notary Public

Case Status of Co-Defendants:

None

Victim Notification Information:

N/A

Victim Impact:

A Victim Impact form was sent to [REDACTED] and has not been returned by the time of this report. Records indicate two pairs of jeans valued at \$100.00, a Nokia Cell Phone valued at \$100.00, an iron valued at \$25.00, a portable phone valued at \$60.00, and a CD valued at \$15.00 were recovered.

Location of Offense:

Bessemer, Alabama with a population over 2,000.

Court Ordered Restitution:

None

RECORD OF ARREST(S)**Prior Arrest Record:**

<u>Date:</u>	<u>Agency:</u>	<u>Offense:</u>	<u>Disposition:</u>
11-11-71	Bess PD	Assault & Batt	NP
10-22-76	Bess PD	POM	NP
06-28-78	JCSO	Burglary	No Bill By GJ
10-13-78	Bess PD	Tresp	\$42.00
08-10-79	Bess PD	FTA	\$117.00
12-04-80	Lipscomb PD	POM	Disp Not Shown
10-05-83	JCSO	Burglary 3 rd	Dismissed
05-18-84	Bess PD	CT/Assault 3 rd	NP/\$72.00

E.L.A.

03-21-85	JCSO Bess CC85-705/706	Burglary 3 rd /Larceny 2 nd	2 Yrs Susp, 5 Yrs Prob 07-10-86; Prob Term 12-13-89/Dismissed
12-31-87	JCSO	Prob Violation	Ctd on 01-19-88
03-28-88	JCSO Bess DC88-508	Assault 3 rd	NP 11-20-89
09-30-88	SO Clayton CO. GA	Crim Tresp	Convicted 10-07-88
11-08-88	SO Cobb CO. GA	Burglary	Convicted 03-31-89; 5 Yrs
09-2-89	JCSO Bess CC90-197/198	TOP 2 nd /Burglary 2 nd	4 Yrs/NP
05-29-90	JCSO Bess CC90-1321	Burglary 3 rd	10 Yrs Split/3 Yrs To Serve; 2 Yrs Prob 03-12-94
09-13-95	JCSO Bess DC95-2198	TOP 2 nd	Convicted 10-12- 95; Split Sent. w/1 Yr To Serve; 2 Yrs Prob
04-27-96	Bess PD	CT 1 st	Disposition Not Shown
06-10-96	JCSO Bess CC96-985	CT 2 nd	15 Yrs Susp w/1Yr Unsuperv Prob 09-10-97; Revoked 04-30-98
11-28-97	JCSO Bess CC98-333/334	TOP 1 st /UBEV	Pled Guilty To TOP 2 nd 04-30-98; 15 Yrs Susp, 1 Yr Prob; Revoked 04-30-98/NP
10-12-02	PD Bess	FTA/FTA/TOP 3 rd	No Disposition Shown

11-14-02	PD Bess	Poss Drug Paraph/FTA	No Disposition Shown
12-24-02	PD Bess	Name Changing/GFI/FTA	No Disposition Shown
01-30-03	PD Bess	Promoting Prison Contraband	No Disposition Shown
01-31-03	PD Bess	TOP 3 rd	No Disposition Shown
02-20-03	PD Bess	Promoting Prison Contraband	No Disposition Shown
03-27-03	JCSO Bess CC03-1095	Escape 3 rd	NP on Plea In current Case 05-06-03

Subsequent Arrest Record:

<u>Date:</u>	<u>Agency:</u>	<u>Offense:</u>	<u>Disposition:</u>
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None

Physical and Mental Health:

Anthony Hendon said he is in good health generally. He said he does suffer from seizures about 7 or 8 times per year. He said he has had two seizures since January. He takes dilantin for this condition. He said he has never been treated for mental or emotional illness.

Hendon said he has been using crack cocaine for about 15 years. He said he used marijuana before that. He said he rarely drinks alcohol. He said he has never had drug treatment, even while he was in prison. He said he would like to go to a substance abuse program.

Probation and Parole Officer's Remarks:

Anthony Hendon was born and raised in Bessemer. He is the third of 16 children. He said he had a good upbringing, with no abuse or neglect. He graduated from Jess Lanier in 1973 with a special education diploma. He said he was in the Army from 1973 to 1975. He married Belinda McConnico in 1978, and they were divorced in 1985. They have one son, Jerrell Hendon, who is 22 years old. Hendon said Jerrell just got a masters degree in Atlanta. Hendon said his previous jobs have

been electrical work. He rarely has been steadily employed. His last job was in 1996 at East Lake Electrical. He said he has done odd jobs in the past to support himself, and also gets financial help from his brothers at times.

Hendon has been to prison twice before. He was last released in June 2002, and got arrested again by that October. He had several disciplinarians during his last prison term, with one being for assault on a DOC officer in June, 2000.

☆ (Hendon says that he now wants drug treatment. Clearly, he would benefit. It is my recommendation that probation be denied, or that a split sentence be imposed. During that time Hendon can get drug treatment in a secure setting, considering his past history, it is doubtful he will be able to participate in treatment for an extended time on his own.

PROBATION PLAN

Home:

Hendon will live with his brother, Cedric, at 1109 Susan Lane, Midfield, AL, phone (205) 929-6127. Cedric's wife and two children live there.

Employment:

Hendon will seek employment.

Educational/Vocational Needs:

None known

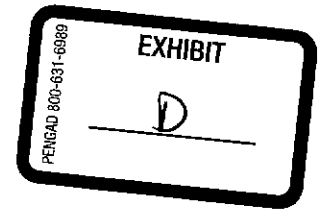
Mental Health/Substance Abuse Needs:

☆ (Hendon admits to long term use of crack cocaine, and has never had treatment. I recommend that SAP or other drug treatment be ordered at the prison.

Signed and dated at Bessemer, Alabama, July 17, 2003


Mary L. Jennings
State Probation/Parole Officer

MLJ/edc



IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ANTHONY HENDON, #159738

Plaintiff,

VS.

BOB RILEY, GOVERNOR, et.al.

Defendant (s)

CASE NO. 2:06-CV-1079-WKW

AFFIDAVIT

Before me, the undersigned authority, a Notary Public in and for said County and State of Alabama at Large, personally appeared Brian Mitchell, who being known to me and being by me duly sworn, deposes and says under oath as follows:

My name is Brian Mitchell, and I am presently employed as Psychological Associate II, employed by the Department of Corrections, Easterling Correctional Facility, 200 Wallace Dr., Clio, Alabama, 36017. I am over twenty-one (21) years of age.

On April 13, 2006, I attended the Progress Review of Inmate Anthony Hendon, AIS# 159738B in my official capacity as the Psychological Associate II for Easterling Correctional Facility. I signed the Progress Review in agreement with the Classification Recommendation and recommended that Inmate Hendon continue to attend AA/NA meetings (Exhibit A). Inmate Hendon's participation in Drug Treatment is not counterproductive, because his need for treatment was determined by a court order (Exhibit B). I do not recommend programs on the basis of receiving government funding. I do not have control over the inmate population. I have not forced Inmate Hendon to participate in any programs.

I have not violated Inmate Hendon's Constitutional Rights.

Brian Mitchell
BRIAN MITCHELL

SWORN TO AND SUBSCRIBED TO before me this the 2nd day of

January, 2007.

Linda E. Deal
NOTARY PUBLIC

My Commission Expires: 7-15-07

APR

ALABAMA DEPARTMENT OF CORRECTIONS - PROGRESS REVIEW FORM - APRIL 12, 2006

===== (COU122) =====
 AIS #: 00159738B SSN: 419-76-6148 RACE/SEX: B/M DATE OF BIRTH: 04/18/1955
 NAME: HENDON, ANTHONY DELL CUSTODY: MED2 SECURITY LEVEL: 4
 INST: EASTERLING CORRECTIONAL CENT TIME SRVD: 03Y00M18 LAST DISC: 11 14 2005
 CRME: RECV STOLEN PROPERTY II MIN REL DT: 12/07/2007 ACTIVE DET: 0

DISC: FIGHTING WITHOUT A WEAPON PRL CONS: 12/01/2006 EDUCAT LEV: 12
 WL/PGM: unassigned PRIM OCCUP: AUTO SERVICEMAN OR MECHANIC

RECOMMENDED INSTITUTION: Easterling RECOMMENDED CUSTODY: Med

JUSTIFICATION: Habitual offender serving 15 years for RSP II (unoccupied residence of items).

PSI available. Was also charged with Escape III (no pros on plea). Has extensive prior felony arrest record. No detainers or sex offenses noted. Completed 12/04 CBSAP @ East. No NA/AA attendance. Has an 11/05 r/v # 35. Recommend NC and remain at East.

I CERTIFY ENEMY LIST WAS REVIEWED AND UPDATED:

NKE, 8/10 (m) 4-12-06 CW APP. S/L:

Charles W. Wilson 4-13-06
 CLASSIFICATION SPECIALIST DATE
Brian Mitchell 4-13-06
 PSYCHOLOGIST/PSYCHOLOGIST'S ASSOC. DATE

Carla F. Dwyer 4-13-06
 WARDEN OR DESIGNEE DATE
Rafaela Cheese 4/13/06
 CLASSIFICATION COORDINATOR DATE

CENTRAL REVIEW BOARD ACTION

___ APPROVED ___ DENIED; DIVERTED TO: ___ REASONS: ___

CRB MEMBER DATE

___ APPROVED ___ DENIED; DIVERTED TO: ___ REASONS: ___

CRB MEMBER DATE

___ APPROVED ___ DENIED; DIVERTED TO: ___ REASONS: ___

CRB MEMBER DATE

FINAL DECISION: INST ___ CUSTODY ___ DATE ___

DATE INMATE INFORMED: ___ INMATE'S SIGNATURE: Anthony Hendon 1597-

4-7-05 PR @ Eastrec NC

DNA 9-10-03 RCL

Diabetic - NO

DL - AL expired

> Kills - Auto Mech.

Meds - NO

Rel - muslim

ACR359

ALABAMA JUDICIAL DATA CENTER
JEFF-BESMR COUNTY
TRANSCRIPT OF RECORD
CONVICTION REPORT

09-79

DC 2003 001094.00 01
ERIC M. FANCHER

37-10

DISTRICT COURT OF JEFF-BESMR COUNTY		COURT ORI: 001033 J	
STATE OF ALABAMA VS.		DC NO: 0000 114866.00	
HENDON ANTHONY DELL		ALIAS: HENDON ANTHONY J	
700 2ND AVENUE		ALIAS:	
BESSEMER AL 35020		SSN: 419766149	
		SID: 000011007	
		AIS:	
DOB: 04/18/1955 SEX: M HT: 6 00 WT: 160 HAIR: BLK EYE: BRO			
RACE: () W (X) B () O COMPLEXION: AGE: FEATURES:			
DATE OFFENSE: 11/29/2002 ARREST DATE: 03/27/2003 ARREST ORI: 0010000			
CHARGES & CONV		CITES	
REC STOLEN PROP 2N 13A-008-018		CT CL COURT ACTION	
212C		01 C GUILTY PLEA	
		0	
		0	
JUDGE: ERIC M. FANCHER 4101		PROSECUTOR: GREEN ARTHUR	
PROBATION APPLIED		GRANTED DATE	
() Y () N		() Y () N	
REARRESTED DATE		REVOKED DATE	
() Y () N		() Y () N	
15-18-8, CODE OF ALA 1975		IMPOSED	
() Y (X) N CONFINEMENT:		15 00 000	
PROBATION :		00 00 000	
DATE SENTENCED: 05/20/2003		SENTENCE BEGINS: 08/07/2003	
PROVISIONS		COSTS/RESTITUTION	
PENITENTIARY		DUE	
CONCURR SENT		ORDERED	
HABITUAL OFDR			
RESTITUTION		\$0.00	
ATTORNEY FEE		\$250.00	
CRIME VICTIMS		\$250.00	
COST		\$254.00	
FINE		\$500.00	
MUNICIPAL FEES		\$0.00	
DRUG FEES		\$0.00	
ADDTL DEFENDANT		\$0.00	
DA FEES		\$0.00	
COLLECTION ACCT		\$0.00	
JAIL FEES		\$0.00	
TOTAL		\$1264.00	
APPEAL DATE		SUSPENDED	
() Y () N		() Y () N	
AFFIRMED		REARREST	
() Y () N		() Y () N	
REMARKS:			
THIS IS TO CERTIFY THAT THE ABOVE INFORMATION WAS EXTRACTED FROM OFFICIAL COURT RECORDS AND IS TRUE AND CORRECT.			
8/7/03-PROBATION DENIED-15 YEAR SENT PLACED INTO EFFECT-IT'S RECOMMENDED THAT DEFT BE PLACED IN DRUG TREATMENT BEFORE BEING PLACED IN GENERAL PRISON POPULATION-JAIL CREDIT ORDERED AND GIVEN-COSTS TAXED TO RUN CC/W ALL OTHER CASES			
EARL N. CARTER JR.			
159738A (30) 08/12/2003			

OPERATOR: GLA
PREPARED: 08/12/2003

ENTERED TERMINALS
DATE 8/14/03 BY CL

AUG 14 2003